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Islamic bioethics: between sacred law, lived experiences, and state authority

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Abstract There is burgeoning interest in the field of "Islamic" bioethics within public and professional circles, and both healthcare practitioners and academic scholars deploy their respective expertise in attempts to cohere a discipline of inquiry that addresses the needs of contemporary bioethics stakeholders while using resources from within the Islamic ethico-legal tradition. This manuscript serves as an introduction to the present thematic issue dedicated to Islamic bioethics. Using the collection of papers as a guide the paper outlines several critical questions that a comprehensive and cohesive Islamic bioethical theory must address: (i) What are the relationships between Islamic law (Sharīʿah), moral theology (uṣūl al-Fiqh), and Islamic bioethics? (ii) What is the relationship between an Islamic bioethics and the lived experiences of Muslims? and (iii) What is the relationship between Islamic bioethics and the state? This manuscript, and the papers in this special collection, provides insight into how Islamic bioethicists and Muslim communities are addressing some of these questions, and aims to spur further dialogue around these overaching questions as Islamic bioethics coalesces into a true field of scholarly and practical inquiry.

Keywords Moral theology · Muslim medical ethics · Islamic legal theory

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Patients and healthcare providers embody the engagement of religion with modern medicine on a daily basis. Patients' salient health beliefs and health care choices are often informed by religious values and understandings. Religion also influences the practice patterns of healthcare professionals in both visible and unconscious ways [1, 2]. Religion, therefore, significantly shapes both patients' and providers' health related behaviors. Yet, when it comes bioethics, the physician's obligations toward patients are more commonly framed within a secular professional framework. The venture toward an ethics detached from religion is a more recent phenomenon —"bioethics began in religion," notes the prominent ethicist Albert Jonsen [3, p. 23]. The need to speak a common ethical language across cultural and religious differences has given rise to a secular bioethics, especially as medical education, practice, and technology continue to globalize and societies become increasingly diverse and morally plural. Nonetheless, since the field of bioethics is concerned with the moral and philosophical implications of biomedicine, it stands to reason that religious understandings and interpretations continue to provide their adherents (both patients and providers) with resources for defining, articulating, and evaluating the moral, philosophical, and ethical questions relevant to biomedicine.

Islam employs a number of ethical frameworks to guide the more than 1.5 billion Muslims toward three important ends: that which is believed to be "good"; that which God requires of them (obligations); and those actions that lead to Paradise. Traditional Islamic ethical frameworks, however, have only recently been applied to controversies in biomedicine in an attempt to meld together an "Islamic bioethics." This is in part due to the fact that Islam is both a lived tradition with its own intellectual development, and a revealed religion from the perspective of its own epistemological paradigm. Thus, the source-material for "Islamic" bioethical inquiry is scattered across several disciplines (theology, moral philosophy, and law). Further, since Muslims lack a singular religious authority charged with distilling doctrine for the community, Islam deploys a variety of approaches to ethics. In fact, the tradition enshrines ethical pluralism in its epistemic approach, and as its core tenet, the tradition teaches man's inherent fallibility and consequent inability to wholly discern Divine will.

The present issue of the *Journal of Theoretical Medicine and Bioethics* provides a glimpse into the emerging field of Islamic bioethics. The papers collected herein are products of a conference entitled, "Where Religion, Bioethics, and Policy Meet—An Interdisciplinary Conference on Islamic Bioethics and End-of-Life Care." The conference was hosted by the University of Michigan on April 10–11, 2011, and directed by me and Dr. Hasan Shanawani. It was motivated by a concern that Islamic bioethical discourse, particularly in the United States, does not adequately meet the needs of its ground-level consumers: Muslim health professionals, patients, and religious leaders [4]. It is true that many stakeholders, from physician professional organizations to Islamic juridical bodies, engage in Islamic bioethics work, and a variety of disciplinary experts, including anthropologists and legal scholars, speak of an Islamic bioethics. There is also burgeoning interest in the field from all of these and other stakeholders. However, the disseminated products of Islamic bioethical discourse often appear disconnected from the bedside realities of medicine, and remain inconsistent in their modes of ethical analysis. These palpable

shortcomings stem, in part, from disciplinary experts frequently remaining sequestered in their professional circles and rarely engaging in conversations with multiple ground-level bioethics consumers. Our conference at the University of Michigan, therefore, aimed to bring together Islamic scholars, religious leaders, social scientists, health professionals, and other disciplinary experts to discuss the Islamic ethico-legal tradition, bioethics, medical practice, and health policy in the American context. The structure of the conference centered around a series of panels, each representing a particular discipline or stakeholder community engaged in Islamic bioethics work. The presenters laid out their methodological approaches to bioethics concerns, and the conference concluded with a set of roundtable discussions about end-of-life care.[1]

In the spirit of the conference, the contributors to this special issue are a diverse set of scholars, including a professor of law (Robert Vischer), several seminary-trained Islamic jurisconsults (e.g., M. Amin Kholwadia and Steven Furber), physicians (e.g., Faisal Qazi, Ahsan Arozullah), bioethicists (e.g., Howard Brody), and an anthropologist (Sherine Hamdy). Collectively, the articles introduce the reader to some of the reasoning, methods, and debates within Islamic bioethics, and map out contemporary contexts that frame Islamic bioethical discourse. The collection also offers insight into several critical overarching questions that a comprehensive and cohesive Islamic bioethical theory must address. In what follows, I highlight some of these questions by referring to the papers in this collection. At the outset, I would like to refer the reader to the glossary at the end of this paper, which defines several of the Islamic ethico-legal terms used throughout this collection.

What are the relationships between Islamic law (Sharīʿah), moral theology (uṣūl al-Fiqh), and Islamic bioethics?

Often translated as Islamic law, the *Sharīʿah* and its related sciences enjoy a privileged status within the Islamic tradition as the crowning achievement of Muslim intellectual effort. These sciences continue to be a primary focus of study within traditional seminaries and within the academy. Indeed, Islamic law occupies a central place in both the individual Muslim psyche and in the greater Muslim society, and the *Sharīʿah* is a primary tool for Muslim engagement with modernity. Therefore, one must rely heavily on the tools and resources of Islamic law when attempting to judge, as a matter of "Islamic" bioethics, the appropriate ordering of medicine and righteous conduct of patients and healthcare providers.

This becomes clearer when one understands that Islamic law has both legal and moral content. *Sharīʿah* etymologically means "the way to the water" and represents an Islamic path to salvation. In other words, a Muslim living within the bounds of the *Sharīʿah* is deemed to be living in accordance with what God requires of him or

[1] For more information about the conference as well as video recordings of the lectures, see https://pmr.uchicago.edu/studies/content/where-religion-bioethics-and-policy-meet-interdisciplinary-conference (accessed March 12, 2013). .

her. The *Sharīʿah*, therefore, more accurately represents both a corpus of rules (*aḥkām*, sing. *ḥukm*) and a moral code. Accordingly, to discern the rules of the *Sharīʿah* is to attempt to assess whether actions lead to salvation or to condemnation in the hereafter. The science that serves as the fountainhead for this type of ethical deliberation is *uṣūl al-fiqh* and it is the arbiter of right and wrong. *Uṣūl al-fiqh* both identifies the sources of ethico-legal knowledge, and lays down discursive rules for ethico-moral reasoning. The end product of Islamic ethical deliberation employing the *uṣūl al-fiqh* methodology is *fiqh,* commonly translated into English as law.

Fiqh is a term widely used in modern parlance and in ethico-legal discourse, but it is often misunderstood. With reference to the *Sharīʿah* and *uṣūl al-fiqh*, *fiqh* refers to an understanding of what the divine law has to say about the merits and obligations attached to an action. When a jurist employs the *uṣūl al-fiqh* methodology, he is attempting to gain an understanding (*fiqh*) of the "rightness" or "wrongness" of an action by "discovering" the rule (*ḥukm*) communicated by God through the medium of the source-texts of Islam. A source of confusion for non-specialists is that often times the terms *fiqh* and *ḥukm* are used interchangeably to refer to an Islamic ruling, although technically the two terms are distinct. According to the *uṣūl al-fiqh* methodology, the end process of coming to an understanding, or discovering the Divine law, is arriving at a *ḥukm taklīfī* or a *ḥukm waḍʿī* [5, 6]. *Ḥukm taklīfī* is a specific determination of whether there is a moral obligation for a Muslim to perform or to avoid a particular action. This determination is made by assessing the expected afterlife ramification—God's reward, punishment, or indifference—attached to an action. The second type of *fiqh* is *ḥukm waḍʿī.* A *ḥukm waḍʿī* imposes a cause, condition, or hindrance to a specific action as gleaned from the source texts of Islam, in essence, by linking the merit of every action to God's approbation, condemnation, or indifference (as best as humans can) through interpretation of the scriptural source texts. The *Sharīʿah* represents a moral code: it is a guide to that which is ethical.

Yet, while Islamic law has an undeniable ethical character, it does not represent the totality of what the Islamic tradition has to say about ethical formation. For example, the cultivation of Godly virtue (an activity that gains reward in the hereafter) is the central concern of Islamic sciences related to spirituality, *taṣawwuf.* Similarly, ethical and virtuous character development is a core concern of the Islamic science of manners and morality, *ʿilm al-ahklāq*. While there is room for reasoned debate about how these somewhat esoteric sciences come together with Islamic law in the construction of an Islamic bioethics, such a dialogue is often precluded by experts trying to apply distinctions between the legal, ethical, and moral, as derived from a Western philosophical perspective, to the Islamic tradition. Such clear distinctions are not inherent to an Islamic moral universe.

Four papers in this collection provide windows into the complex methods, constructs, and content of Islamic ethico-legal deliberation. Khalil Abdur-Rashid, a doctoral candidate in Islamic Law at Columbia University and a seminary-trained Imam, along with colleagues Musa Furber, a seminary trained Islamic jurisconsult, and Taha Abdul Basser, a university-based Islamic law expert, offers a typology of Muslim ethical decision-makers and the sources and methods used in Islamic ethical deliberation. According to these authors, bioethics is "Islamic" only when "the

foundation upon which it is constructed, the process which is undertaken in progressing towards the end, and the means through which its goals are achieved are accomplished utilizing an Islamic methodology from the sources of Islamic ethics [read law].” This methodology, for them, is *uṣūl al-fiqh*, and it follows that “Islamic” ethicists must possess training in *uṣūl al-fiqh* and specialize in its application to the field of bioethics. Given this thesis, the authors provide a general overview of sources (*uṣūl*) of Islamic ethics (*al-fiqh*) and proceed to outline three archetypes of Islamic ethicists: (1) the jurisconsult (*muftī/faqīh*), (2) the professor (*mudarris*), and (3) the author (*muṣannif*). After introducing the reader to a typology of Islamic ethicists and the sources these ethicists use to determine whether actions are ethical (the yardstick being reward or punishment in the hereafter), the authors introduce the reader to the inner workings of an Islamic ethical deliberation. Methodological techniques used by Islamic ethicists, such as differentiation (*furūq*), preponderization (*tarjīḥ*), and the consideration of public interest (*maṣlaḥah*) are explained, and the authors close by outlining several methodological devices to which an Islamic ethicist may resort when seeking to further refine his assessment. These devices include referring to the higher objectives/aims of Islamic law (*maqāṣid*) in order to “determine the overall correctness and value of the decision,” or looking to Islamic legal principles (*qawāʿid*) and controls (*ḍawābiṭ*) since they are “instruments to guide one’s precision and accuracy in reaching a conclusion,” but are not overall determinants of a decision. Finally, the authors note the increasing use of group decision making processes (*ijtihād jamāʿī*) in Islamic bioethics.

Dr. Ahsan Arozullah, along with Shaykh Amin Kholwadia, a seminary trained Islamic scholar, contribute a piece that highlights Islamic theology in bioethical decision making. Their paper expounds on the implications the theological concept of *wilāyah* (authority and governance) has for Islamic bioethics discourse. Starting from where Abdur-Rashid et al. left off, these authors suggest that the concept of *wilāyah* undergirds moral authority accorded to Islamic juridical councils employing *ijtihād jamāʿī* for bioethics. They note that Islamic authorities are imbued with three different levels of *wilāyah* (moral, legal, political) and that each level of authority places a commensurate set of obligations upon Muslims to act in accordance with a particular authority’s decree.

Rooting themselves within the Māturīdī school of theology,[2] the authors begin by referencing the theological supposition that is the foundation of Sunni *uṣūl al-fiqh*—most prominently that of the Ḥanafī school of law[3]—which states that “sound human reason may determine moral value in human actions in this world, such as goodness in speaking the truth or evil in lying … [yet] divine revelation is the only source from which to determine sin or reward for these actions in the afterlife.” Accordingly, Islamic bioethical decision making is primarily concerned with “sin or reward in the afterlife” and evaluates the worldly consequences of Islamic

[2] Sunni Islam has two prominent schools of extant scholastic theology (*kalām*): the Māturīdī and the Ashʿarī. Often referenced in discussion of *kalām* is the Muʿtalizite school which more closely relates to Shiite Islam. Please see Sherman Jackson [7, chs. 1–4] for a concise overview.

[3] The extant Sunni schools of Islamic law are four and are named after their promulgators: Mālikī, Ḥanafī, Shāfiʿī, and Ḥanbalī. Please refer to any of a number of Islamic legal manuals for further details.

judgments secondarily. According to the authors, actions that are rewarded in the afterlife have a “tangible ‘benefit’ in this world,” and similarly, actions that are sinful (punishable in the hereafter) carry with them “a tangible ‘harm’ in this world.” They emphasize that sound human reason may determine these tangible “benefits” and “harms,” whereas revelation is the only source of knowledge about afterlife ramifications. Given this backdrop, these authors also comment on the primary sources (*uṣūl*) of Islamic knowledge (*al-fiqh*) and categorize the output of Islamic ethical deliberation about an act (*ḥukm taklīfī*) along a moral gradient and with a corresponding level of obligation to perform or avoid the action. The authors then proceed to discuss the types of *wilāyah* and the duty of Muslims to obey authorities with each of these types of *wilāyah*. For example, they note that Muslims living in a non-Muslim land are not bound by political *wilāyah* since there is no Muslim state authority to obey, yet they are required to “follow the law of the land.” Moving to the application of *wilāyah* in the realm of bioethics, the authors note a moral obligation of Muslims to ask Islamic jurisconsults about ethical dilemmas since only Islamic jurists have knowledge about whether an action carries sin. Such scholars, in turn, have an academic *wilāyah* over the laity and a Muslim “is accountable … for not following through on the opinion of the scholar.” Using the case example of whether or not it is ethico-legally permissible to use porcine insulin, the authors conclude by working through the levels of *wilāyah* and the corresponding obligations of Muslims to act in accord with those who have *wilāyah*.

Tariq Ramadan, professor of contemporary Islamic studies at the University of Oxford, begins his piece by discussing the relationship between *fiqh* and *uṣūl al-fiqh* and from there moves to discuss other aspects of the Islamic ethico-legal tradition. His commentary focuses on mapping out several challenges for the field of applied Islamic ethics. He discusses first the “need to acquire a better understanding of terminology.” For example, he notes that the term ethics has Greek origins and does not have an exact correlate within the Islamic tradition. He proceeds to comment on whether the Islamic ethico-legal tradition must be propounded solely by referring to the scriptural sources or whether the context, i.e., social reality, can serve as a normative source material. He also questions the preoccupation Muslims have with the end-products of *uṣūl al-fiqh* deliberation—the rules (*aḥkām* singular *ḥukm*). In his view, the *Maqāṣid as-Sharīʿah*, the objectives or end-goals of *Sharīʿah*, should be a parallel concern in Islamic ethical deliberation. Since the objectives of the law are rationally derived while the rules, *aḥkām*, rely more heavily on textual sources, considering both the rules and the objectives together leads one to rely equally on reason and revelation. This harmonious “middle path” in applied Islamic ethics is arrived at only when scholars search for ethical guidance in both the text and the context and consider the rulings (*aḥkām*) as well as the objectives (*maqāṣid*) of the Islamic ethico-legal tradition. In the final portion of his paper, Professor Ramadan outlines several concepts that are critical for any Islamic bioethics project. He notes that the Islamic ethico-legal tradition leans toward a reformatory paradigm, *al-iṣlāḥ*, and that Islamic ethics should be focused not on adapting the moral code to meet the needs of society but, rather, on “betterment and purification” of society. His piece closes with a comment on Islamic authority structures. Traditionally, Islamic scholars were considered the sole authority in matters of ethics and law. Professor

Ramadan advocates a “shift in the center of gravity of authority” such that alongside Islamic jurisconsults, scholars of the context, e.g., experts in fields of social and natural sciences, are accorded authority within Islamic ethical deliberation. By doing so, he argues that the natural and social sciences will be able to provide normative ethical content to Islamic ethics projects.

In their manuscript, Dr. Faisal Qazi, a neurologist and ethicist, and his colleagues point out that the end-product of Islamic ethico-legal deliberation, a *ḥukm*, is only an approximation of divine law. These authors suggest that within Islamic bioethical debates, rulings (*aḥkām*) arrived at by Islamic jurisconsults are often treated as certain knowledge and not as probabilistic assessments. Consequently, when rulings are treated as determinate, little space is accorded for dissenting opinions or for challenging a particular legal scholars’ ethico-legal reasoning. These authors consider this current situation to be antithetical to the spirit of Islamic ethico-legal discourse. They note that *uṣūl al-fiqh* is founded upon the fact that there may be multiple “right” answers to any scenario. This pluralism implies that most ethico-legal rulings are probable determinations and not conclusive assessments. Overlooking this innate characteristic of Islamic law results in a rigid “Islamic” bioethics.

To illustrate their thesis, the authors analyze Islamic ethico-legal deliberations about brain death. They note that one of the arguments used by Islamic ethicists to oppose brain death is that the medical diagnosis of brain death is not definitive. Hence the legal principle that “certainty is not eroded by doubt” (*al-yaqīn la yuzulu bi ‘l-shakk*) is used to buttress arguments that legal death occurs only with cardiopulmonary collapse. The authors suggest that while Islamic ethicists are willing to reject medical data because it is probability based, Islamic ethico-legal judgments for or against brain death also do not reach a level of certainty. Indeed, the *uṣūl al-fiqh* methodology only approximates God’s intent because it relies on the fallible medium of human interpretation. Given that both Islamic ethicists and scientists use methodologies that are probabilistic, the authors suggest the need for a more humble multidisciplinary Islamic bioethics discourse in which clinicians and Islamic legal experts work side by side to meet the needs of Islamic bioethics consumers and acknowledge that any conclusion they put forth is only an approximation, whether the determination is made in the realm of medical science or in the realm of Islamic ethics.

What is the relationship between an Islamic bioethics and the lived experiences of Muslims?

The place of lived experience as source-material for ethical norms is a widely debated area in religious ethics. Seminary based religious studies often focus on engaging sacred source-texts to derive a particular approach to evaluating human behavior and social reality. Alongside a written tradition that preserved sacred texts, religious communities often also preserved an oral tradition and authority structures that assisted with the interpretation of the textual sources. Academic religious studies, therefore, commonly involved exploring the ways in which religious texts

and textual authorities evolved and developed. In the past several decades, however, there has been a shift in the academic study of religion away from texts and the interpreters of texts towards more detailed studies about the lives of religious adherents. While sociological approaches to religious studies offer a new vantage point for investigating how religious traditions provide meaning to believers on the ground, there is considerable debate about the normative value of these experiences. Some suggest that social science approaches redefine religious traditions as purely social phenomena, bracketing off any truth claims that religious systems may propagate. Others suggest that religion only exists through the interpretive medium of human life. Therefore, examining the lives of religious adherents is central to discerning the ideal structure of society and of human conduct advanced by a particular religious tradition. Different religious traditions, as well as the different religious streams within each of them, may approach these controversies in varied ways. Hence, attempts at distilling an Islamic bioethics must tackle the thorny issue of determining where the lived experiences of Muslims belong in a normative framework.

In an attempt to bring clarity to the study of Islamic approaches to bioethical challenges, I have called for a distinction between the field of Islamic bioethics and Muslim bioethics [4, 8]. I consider Islamic bioethics to be a field anchored within the ethico-legal traditions of Islam and concerned with the bioethical discourse produced by the bearers of that tradition. Muslim bioethics, in my view, represents the sociological and anthropological study of how Muslims act when encountering medicine and biotechnological advances. In other words, the former concerns itself with the study of texts, doctrines, and those who produce texts and doctrines, while the latter studies the human actors that in partial and varied ways engage these texts and doctrines while facing bioethics challenges.

Such a partition between Islamic and Muslim bioethics gives rise to questions about the relationship between the social sciences and the Islamic ethico-legal sciences. To date, Islamic approaches to bioethics have largely ignored these questions, and as a result, Islamic bioethical discourse often devolves into meetings in which social scientists and medical practitioners talk past the experts in Islamic law, and vice versa.

To illustrate the challenge, let us consider surrogate decision making at the end-of-life. Studies show that the majority of surrogate decision makers find making choices about the continuation of medical intervention for their loved ones to be highly stressful [9, 10]. Indeed, some studies find the levels of stress in these surrogates to be analogous to levels found in people suffering from severe trauma. This empirical fact may be interpreted as a variable that should be weighed when considering the proper models of surrogate decision making in end of life care. Leaving aside the fact that Islamic bioethics discourse is silent when it comes to models of decision making, the question is how to incorporate the "truths" from empirical social science into an Islamic bioethical approach. In the traditional *uṣūl al-fiqh* paradigm, such "facts" may only enter the discursive processes of ethico-legal assessment after a thorough interrogation of the primary sources, *uṣūl.* If the textual sources are silent, then facts from social science may be considered. One manner in which this may be accomplished is through recourse to the secondary

source of *ʿurf*, custom, and its related legal maxim, *qāʿidaḥ*, *al-ʿādah al-muḥakkimaḥ*, "customs inform rules." Both the secondary source and the legal maxim privilege social considerations and habit when the primary sources are silent. *Maqāṣidī* approaches to *fiqh* do not directly address the issue in so far as they do not dictate a prioritization schema for when and how social reality governs ethico-legal deliberation. It is therefore apparent that social science data does not easily fit into a normative Islamic ethico-legal framework.

So how does Islamic bioethics weigh social science data about patients, medical practice, and biotechnology in setting out Islamic bioethics norms? On the one hand, if Islamic bioethics approaches neglect lived experiences, the field would be a disembodied intellectual exercise. On the other hand, if Islamic bioethics approaches do not clearly demarcate the place for social science in its methodology, confusion as to what is "Islamic" about Islamic bioethics would abound. Further, in so far as Islam upholds Deistic subjectivism (the concept that "things" are meritorious only because God has labeled them as such and wrong because He has declared them to be) as a foundational principle for ethico-legal theory, caution must be exercised to clearly mark out the entry points of social science approaches and natural law theory into the inner workings of Islamic bioethics. Otherwise, Islamic bioethics as a field may become a confused amalgam of clashing epistemological frameworks that cannot set out ideals for human conduct.

Two papers in this series relate to the debate around how to consider religious ideas in the formulation of a religious approach to bioethics. Howard Brody, a prominent scholar of modern bioethics, and colleague Arlene Macdonald, a religious studies expert, pen a piece that calls for an expanded definition of religion beyond sacred texts and textual authorities, such that it encompasses religion's sociological influence on individual's identities and values. They remark that for bioethics to appropriately engage with religious beliefs, values, and identities, "it helps to view religion as lived experience as well as a body of doctrine." According to these authors, the bioethics community still remains attached to "defining the substance of religion as sacred texts, authoritative structures, and comprehensive systems of meaning." In doing so, they privilege a Christian and Western conceptualization of religion that "artificially stabilizes" religious identity. The problem they note with this view is that it leads to stereotyping religious people as they are assumed to act in "ways pre-determined by authoritative scriptures and institutional bodies." Such an account of religion only provides bioethicists with knowledge about what the religious orthodoxy ought to believe. It does not provide insight into what is actually believed and practiced.

Brody and Macdonald suggest instead that bioethicists should look to the developing social theory approaches to religion, in which scholars postulate that religious knowledge may be as much somatic as it is textual, and study the practices of ordinary religious adherents. In doing so, religious tradition becomes one of the "multiple social and cultural inputs that construct religious persons," and the diversity of ways in which members of a faith community are influenced by their religious tradition becomes recognizable. A sociological conceptualization of religion would foster a patient centered approach to bioethical challenges that is attuned to finding solutions based on an individual's particular conceptualization of

his or her religious identity. Brody and Macdonald's proposal has implications at a societal level and for public policy—a topic to which I shall return shortly.

Sherine Hamdy, an anthropologist, in her article, studies the reasons for the refusal of Egyptian doctors to diagnose death by neurological criteria. Relying on years of ethnographic study, she recounts the concerns and experiences of Egyptian patients, religious scholars, and medical practitioners with organ transplantation and brain death. In her view, the "lived experiences" of Egyptian patients and medical practitioners belies a "cohesive or homogeneous" field of *Islamic* bioethics. She suggests that health policy stakeholders and mass media misrepresent the debate over Egyptian organ transplantation policy as a clash between the values of a Western medical and bioethics community and the objectives of Islamic law. Hamdy suggests that the narrative of a clash of civilizations serves to tap into post-colonial fervor about upholding traditional values in the face of a corrupted and Western modernity. Hamdy argues that the underlying concerns that the Egyptian populace and health care workforce have about a cadaveric procurement program are about the protection of vulnerable people, the equitable distribution of organs, and fair access to treatment. These types of concerns are not Islamic per se, since they are concerns shared across societies and religious traditions. And as long as the concerns over cadaveric organ procurement programs in Egypt remain misclassified as stemming from the Islamic ethico-legal tradition, legitimate concerns about the vulnerabilities of marginalized patients and social justice will remain unaddressed, thereby impeding the establishment of a properly running organ transplantation system in Egypt.

Professor Hamdy's manuscript adds an additional wrinkle to the conceptualization of religion as a primary source for bioethical theory. Some of her subjects couched their rejection of brain-death criteria and of organ transplantation in "Islamic" terminology. They suggest that brain death cannot be equated with legal death in Islam because, for example, "the soul is still there" or it affronts the Islamic views on the dignity of the body. Such concerns, while shared by other religious communities, are said to be rooted in the Islamic tradition within the Egyptian (Muslim) context. If the bioethics community adopts a more sociological conceptualization of religion in its engagement with Islam and Muslims, then what is the criterion by which to distinguish genuine Islamic concerns from concerns mislabeled as Islamic? If human actors tell us what "is" for them an "Islamic" concern, does it not, in reality, become a concern stemming from the tradition? Labeling a problem as one stemming from religious valuation implies that solving the problem requires engaging religious ideas and authorities.

Health interventions to promote organ donation among Muslims illustrate this conundrum. Surveys from across the Muslim world note that Muslim populations are generally less likely to donate their organs and often cite religious reasons as underlying their disinclination [11–18]. Recognizing religious interpretations as barrier beliefs, health care stakeholders have engaged religious authorities across the world in a conversation over the Islamic views on organ donation and transplantation. These initiatives have led to multiple *fatāwā* that declare organ donation to be permissible according to Islam [19–21]. Yet, subsequent surveys often find that Muslim attitudes toward organ donation remain largely unchanged

[22]. The failure to change Muslim attitudes concerning organ donation despite multiple widely disseminated juridical rulings is puzzling. One explanation may be that the people who cite religious concerns as a dissuading factor are mislabeling their concerns as religious and thus the *fatāwā* are ineffective in changing their opinions. Alternatively, even though the concerns may be religious in nature, *fatāwā* may be the incorrect medium through which to change health behavior [23]. This example highlights the challenge of labeling a social phenomenon as rooted in religion. At times, human actors may outfit their beliefs in religious garb even when those beliefs are unrelated to religion. Alternatively, while a social value may be described as originating from a shared set of universal values, an individual's motivation to act in accordance with that value may stem from the belief that their religion upholds that value.

Religious traditions do set cultural norms and are manifest in human behaviors. In my view, however, looking at what "is" (social reality) will only generate an incomplete picture of what religious traditions suggest "ought" to be. Islamic bioethics projects will have to come up with yardsticks to measure the "Islamicity" of values and ideas as gleaned from the voices and experiences of Muslims. How to do that remains a challenging and controversial enterprise.

What is the relationship between Islamic bioethics and the state?

The place of religion in the public square is a highly important and hotly contested topic. In a pluralistic and diverse society such as ours, the use of religious arguments to promote public policies and law understandably makes individuals who do not share the same religious views feel uneasy. Even religious adherents may be troubled by the co-opting of religion to promote a specific policy or law, since the idea of a "neutral" public square, where debate occurs in secular terms, seems essential to a liberal democracy. Yet, public debates on a variety of bioethical issues invariably have religious overtones. From the controversies surrounding stem cell research and partial-birth abortion to public debates over health care reform, faith communities offer religious rationales for advocating one policy over another, and religious adherents note that being forced to repackage their religiously rooted values into secular concepts leads to disingenuousness.

Brody and Macdonald revisit the concept of a neutral public square in the works of John Rawls and Martha Nussbaum. They trace the development of Rawls's political philosophy and minimalist view of religious toleration. Rawls suggested that public laws and policies should be argued for by appeal to values that are shared by the citizenry and not to those of specific religious traditions, as they are unlikely to be shared by all. According to the authors, Rawls insisted that while citizens may benefit from learning about the religious rationale of their colleagues' opinions, "the citizen demonstrating ideal civic virtue would restate whatever he had previously said in religious terms, in the language of the overlapping consensus." But the authors suggest that we need to move beyond mere tolerance so that the public square may be enriched by citizens discussing their religious values in debates over policies and law. They propose that "the best route to an appreciation of religion in

the public square, in a way that enhances the practice of bioethics, is to apply … [a] concept of social reciprocity" whereby individuals explain fully how their positions are grounded in their belief structure and religious tradition. In conclusion, these authors harken back to their suggested reconceptualization of religion as an embodied social reality. They argue that the fear of allowing religious arguments in the public square stems from seeing religion as a totalizing body of doctrine. If religion is alternatively viewed as a social force negotiated in partial and varied ways by individuals, then there may be no need to fear absolutist and irrational argumentation by religious adherents in the public square. Instead, a diversity of interpretations would allow for reasoned negotiation between individuals belonging to different religious traditions.

Moving from political theory to legislation, Robert Vischer, a professor of law, discusses the relationship of health care and religion in the legal system. He notes that a particular religious community's commitments may inform the writing of law such that all citizens are bound to that commitment. As an example, he cites the criminalization of assisted suicide in the United States as originating from Christian teachings that, when enshrined into law, bind both Christians and non-Christians. Obviously, other non-Christian moral traditions, including Islam, hold the same view on assisted suicide, but this is not the case for every tradition or for every bioethical issue. Over the past few decades, however, "the Supreme Court has taken a skeptical stance toward laws that limit personal liberty based solely on the assertion of a moral claim." This changing landscape may reflect a nod to Rawlsian ideas about the public square and evidences an inclination towards allowing the citizenry to live out their lives without religious communities infringing on personal liberty. At the same time, the legal system has been trying to create a space in which religious health care providers have the liberty to integrate their faith commitments with their own work. This debate centers on the liberty of conscience and how far health care institutions need to accommodate the religious commitments of individual providers over treatments that are proscribed by their faith. The most common examples revolve around contraceptive services and abortion, where the law must protect the right to conscience while at the same time insuring that the health care needs of the population are met. For Vischer, some of these tensions may be reduced by recapturing "the notion that the dictates of conscience are defined, articulated, and lived out in relationship with others." This relational view of conscience recognizes that while "conscience might be expressed and defended by the individual … its substance and real-world implications are relational by their very nature." Recognizing that one's recourse to conscience-based arguments affects the lives of others may lead to reasoned negotiation and compromise. Thus, like Brody and Macdonald, he calls for a public square that allows recourse to arguments based on religious commitments. By conveying one's "perception of reality's normative implications," an individual "makes truth claims that possess authority over" his own conduct and that of individuals who share those same commitments. Too often, he argues, conscience arguments are portrayed as personal or institutional hang-ups that preclude compliance with a professional standard of care. Yet, it is also possible that by allowing individuals to express their religious commitments, a different standard of care arises that would enrich the profession

and benefit the populace. Professor Vischer argues that cultivating and maintaining the conditions necessary for freedom of conscience should be the priority for our society and its legal system.

Professor Vischer concludes his commentary by noting that for Muslim health care workers, exercising their freedom of conscience at the institutional level becomes more difficult because institutional efforts to accommodate Muslims are often seen as "equivalent to legal enshrinement of those convictions." This is witnessed by anti-*Sharīʿah* legislative initiatives, which mistake the attempt of Muslim communities to seek recourse to their religious norms for an attempt by Muslims to have the American legal system *adopt* Islamic rules of conduct. Thus when a Muslim couple asks for a dissolution of marriage based on Islamic tenets, they are asking the court to honor a contractual provision already agreed upon by the couple in the marriage contract. They are not asking the court to *adopt* Islamic laws of divorce. This misperception fuels a distaste for accommodating Muslims' values in personal and professional realms and challenges the Muslim health care provider's recourse to conscience clauses in the health care domain.

So what does this all mean for Islamic bioethics? Some of the implications are hinted at in the article by Arozullah and Kholwadia. In it, they discuss the concept of *wilāyah* as controlling the tenor of Muslim obligations within Islamic bioethical theory. The authors state that "Muslims living in non-Muslim lands today are required to follow the law of the land and there is no obligation on them to gain political or legal *wilāyah.*" In the context of their discussion of *wilāyah*, sin is only attributed to Muslims who disobey an Islamic ethico-legal injunction or disobey a Muslim state authority's laws (as long as the law does not contravene an Islamic obligation). From their discussion, it seems that there may be space within Islamic law for Muslims living under non-Muslim rule to claim liberty of conscience when laws conflict with religious commitments. While Muslims should follow the law of the land within a non-Muslim state, they do not automatically sin when not obeying the laws of a non-Muslim state actor, where there is conflict between an Islamic injunction and the secular law. Arozullah and Kholwadia also note that there is no obligation to gain political or legal *wilāyah* for Muslims living in a minority status. If this is the case, then Muslim communities living under non-Muslim rule need not seek to enshrine their religious commitments into law. Muslims in a non-Muslim state may instead incline toward, to use Professor Ramadan's terminology, an "adaptive" ethics rather than a "transformative" paradigm for society. This type of Muslim response has implications for the public square. Brody and Macdonald and Vischer call for religious communities to more fully explain their religion-infused arguments for or against a public policy or law. They argue that public discourse is enriched by understanding where Islam comes from, yet an adaptive ethico-legal mindset may disincentivize the Muslim community from engaging in a dialogue that lays bare their religious values and commitments.

Further, there is a long-standing tradition within the United States of seeking the voice of religious communities in matters of health law and bioethics. For example, the Presidential Commission for the Study of Bioethical Issues often seeks opinions from religious authorities when advising the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. If

Islamic bioethical theory suggests that Muslims are in no obligation to seek influence over policies and laws that reflect their ethico-legal commitments in a non-majority state, and if the public square remains hostile to Muslims voicing religious views, then it stands to reason that Islamic bioethics may remain an insular field. Fleshing out what Islamic bioethics requires of Muslims in a minority status, and whether those obligations are different in a majority status when it comes to health policies and state laws, is critically important.

Final remarks

This special issue of *Theoretical Medicine and Bioethics* represents a window into Islamic bioethical discourse. While Islamic bioethics draws upon the depth and breadth of the Islamic ethico-legal tradition, there are many important questions to address about the sources it draws upon before one can expound a comprehensive Islamic bioethical theory. When seeking to develop a robust and complete framework for Islamic bioethics, one must also be cognizant of the methods of moral reasoning the field employs, and the points at which it departs from modern bioethics as well as from Western ethical and political theories. The papers in this collection provide insight into how Islamic bioethicists and Muslim communities are addressing some of these questions, and I hope this work will spur further dialogue around these critical questions as Islamic bioethics coalesces into a true field of scholarly and practical inquiry.

A glossary of relevant Islamic Ethico-legal terms used in this collection

al-Akhlāqiyāt	Ethics as related to human behavior or conduct
Amīr	A (Muslim) political authority
Ḍarūrah	Dire necessity
Fiqh	Jurisprudential understanding or an ethico-legal ruling
Fatwā (pl. *fatāwā*)	A non-binding, context specific Islamic ethico-legal assessment or ruling issued by a trained Islamic jurist
Ghayb	Unseen realm
Ḥukm (pl. *aḥkām*)	Ruling; judgment; decree
Ḥukm taklīfī	One of the two types of judgments (*ḥukm*) that result from using *uṣūl al-fiqh* methodology. This type of *ḥukm* locates an action along an ethical gradient from obligatory to perform to obligatory to refrain from, each gradient having its own afterlife ramifications
*Ijmā*ʿ	Consensus agreement; a formal source (*uṣūl*) of Islamic law
Ijtihād	Juristic effort or methodology used to construct a fatwa
Ijtihād jamāʿī	The process of group decision making based on *uṣūl al-fiqh* within a council of Islamic jurisconsults
al-ʿIllah	The intention of God when He revealed a Qu'ranic rule or inspired a Prophetic tradition stating a rule. *Iṭāʿah* Obedience
Ittibāʿ	Following the example of (an individual)
Madhhab (pl. *madhāhīb*)	The 'schools' of Islamic law which have tradition-based legal theories

Table a continued

al-Maqāṣid	The objectives of Islamic *Sharīʿah*
Maṣlaḥah	Public interests or benefit. A variably interpreted source of Islamic law
Muftī/faqīh	Islamic ethicist; jurisconsult
Nafs	Self, sometimes used interchangeably with *rūḥ*
Naṣṣ	Textual sources of the Islamic ethico-legal tradition, such as the Qu'ran and the Sunnah
Qāḍī	A judge who is given legal authority by an Islamic government
Qaṭʿī	A term used to denote univocal texts that lead to a definitive and singular judgment
Qiyās	Precedent based analogy, a formal source (*uṣūl*) of Islamic law
Rūḥ	Soul
Sharīʿah	Islamic (moral) law
ʿUlamā'	Literally "the learned." The term refers to scholars of the Islamic tradition trained in Islamic seminaries. A near-equivalent term or synonym is *Fuqahā'* (singular *Faqīh*), meaning, "scholars of *fiqh*," which specifically refers to Islamic scholars of law and ethics
ʿUrf	Refers to the social practice and norms of a community—a disputed source of Islamic ethics
Uṣūl al-fiqh	Islamic legal theory or moral theology; the science identifies the sources of ethico-legal knowledge and lays down the discursive rules for moral-ethical reasoning
Walī	Guardian and protector; one who is responsible for someone else
Wilāyah	Authority and governance
Yaqīn	Absolute certainty
Ẓannī	Refers to a judgment (or proof text interpretation) that is probability based

All transliterations of Arabic terms in this special issue have been standardized according to the romanization tables produced by the Library of Congress [24]

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